

IN RE NUTANIX INC. SECURITIES  
LITIGATIONNorton, *et al.*

Plaintiffs

vs.

NUTANIX, INC., *et al.*

Defendants

Case No. [19-cv-01651-WHO](#)

Case No. 21-cv-04080-WHO

**FINAL APPROVAL ORDER AND  
ORDER AWARDING FEES AND  
COSTS**

Re: Dkt. Nos. 317, 318

This matter came before the Court for hearing on October 4, 2023. Due and adequate notice having been given to the Class as required in the Order, the Court having considered all papers filed and proceedings held herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Judgment incorporates by reference the definitions in the Stipulation, and all capitalized terms used herein shall have the same meanings as set forth in the Stipulation, unless otherwise stated herein.

2. This Court has jurisdiction over the subject matter of the Actions and over all parties to the Actions, including all members of the Class.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby affirms its determination in the Preliminary Approval Order and finally certifies for purposes of the Settlement only a Class defined as: “all persons or entities who: (i) purchased or otherwise acquired Nutanix, Inc. (“Nutanix”) securities between November 30, 2017 and May 30, 2019, inclusive (the “Class Period”), and/or (ii) transacted in publicly traded call options and/or put

1 options of Nutanix during the Class Period. Excluded from the Class are Nutanix and its  
2 subsidiaries and affiliates, the Individual Defendants, any of Defendants' respective officers and  
3 directors at all relevant times, and any of their immediate families, legal representatives, heirs,  
4 successors, or assigns, and any entity in which any Defendant has or had a Controlling Interest."

5 4. Also excluded from the Class is any Person who timely and validly sought  
6 exclusion from the Class, as identified in Dkt. No. 320-2.

7 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby  
8 approves the Settlement set forth in the Stipulation and finds that:

9 (a) in light of the benefits to the Class and the complexity and expense of  
10 further litigation, the Stipulation and the Settlement contained therein are, in all respects,  
11 fair, reasonable, and adequate;

12 (b) there was no collusion in connection with the Stipulation;

13 (c) Plaintiffs and Lead Counsel have adequately represented the Class;

14 (d) the Stipulation was the product of informed, arm's-length negotiations  
15 among competent, able counsel;

16 (e) the relief provided for the Class is adequate, having taken into account: (i)  
17 the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method  
18 of distributing relief to the Class, including the method of processing Class Member's  
19 claims; (iii) the terms of any proposed award of attorneys' fees, including timing of  
20 payment; and (iv) any agreement required to be identified under Federal Rule of Civil  
21 Procedure 23(e)(3);

22 (f) the proposed Plan of Allocation treats Class Members equitably relative to  
23 each other; and

24 (g) the record is sufficiently developed and complete to have enabled Plaintiffs  
25 and Defendants to have adequately evaluated and considered their positions.

26 6. Pursuant to Federal Rule of Civil Procedure 23, this Court hereby finds and  
27 concludes that due and adequate notice was directed to Persons who are Class Members advising  
28 them of the Plan of Allocation and of their right to object thereto, and a full and fair opportunity

1 was accorded to such Persons and entities who are Class Members to be heard with respect to the  
2 Plan of Allocation.

3       7. The distribution of the Postcard Notice by email and mail (where no email was  
4 available), posting of the Notice and Proof of Claim, and publication of the Summary Notice as  
5 provided for in the Preliminary Approval Order constituted the best notice practicable under the  
6 circumstances, including individual notice to Class Members who could be identified through  
7 reasonable effort. The notice provided was the best notice practicable under the circumstances of  
8 those proceedings and of the matters set forth therein, including the proposed Settlement set forth  
9 in the Stipulation, to all Persons entitled to such notice, and said notice fully satisfied the  
10 requirements of Federal Rule of Civil Procedure 23, due process and any other applicable law,  
11 including the Private Securities Litigation Reform Act of 1995. No Class Member is relieved  
12 from the terms of the Settlement, including the releases provided for therein, based upon the  
13 contention or proof that such Class Member failed to receive actual or adequate notice. A full  
14 opportunity has been offered to the Class Members to object to the proposed Settlement and to  
15 participate in the hearing thereon. The Court further finds that the notice provisions of the Class  
16 Action Fairness Act, 28 U.S.C. §1715, were fully discharged and that the statutory waiting period  
17 has elapsed. Dkt. No. 321. Thus, it is hereby determined that all members of the Class are bound  
18 by this Judgment, except those persons listed on Exhibit A to this Judgment.

19       8. The Court hereby finds and concludes that the formula for the calculation of the  
20 claims of Authorized Claimants, which is set forth in the Notice of Pendency and Proposed  
21 Settlement of Class Actions (the “Notice”) provided to Class Members, provides a fair and  
22 reasonable basis upon which to allocate the proceeds of the Net Settlement Fund provided by the  
23 Settlement among eligible Class Members, with due consideration having been given to  
24 administrative convenience and necessity.

25       8. The Court hereby finds and concludes that the Plan of Allocation, as set forth in the  
26 Notice, is, in all respects, fair and reasonable, and the Court hereby approves the Plan of  
27 Allocation.

28       9. Accordingly, the Court authorizes and directs implementation and performance of

1 all the terms and provisions of the Stipulation, as well as the terms and provisions hereof. Except  
2 as to the one individual who has validly and timely requested exclusion from the Class (identified  
3 at Dkt. 320-2), the Actions and all claims contained therein are dismissed with prejudice as to the  
4 Plaintiffs, and the other Class Members and as against each and all of the Released Defendant  
5 Parties. The Settling Parties are to bear their own costs except as otherwise provided in the  
6 Stipulation.

7 10. No Person shall have any claim against the Plaintiffs, Lead Counsel, or the Claims  
8 Administrator, or any other Person designated by Lead Counsel based on determinations or  
9 distributions made substantially in accordance with the Stipulation and the Settlement contained  
10 therein, the Plan of Allocation, or further order(s) of the Court.

11 11. Upon the Effective Date, Plaintiffs, and each of the Class Members (whether or not  
12 such Class Members execute and deliver a Proof of Claim, but excluding Class Members who  
13 have validly opted out of the Class), on behalf of themselves, and each of their respective heirs,  
14 executors, administrators, predecessors, successors, assigns, parents, subsidiaries, affiliates,  
15 officers, directors, agents, fiduciaries, beneficiaries or legal representatives, in their capacities as  
16 such, and any other Person or entity legally entitled to bring Released Claims on behalf of a Class  
17 Member, in that capacity, shall be deemed to have, and by operation of this Judgment shall have,  
18 fully, finally, and forever compromised, settled, resolved, waived, released, discharged, and  
19 dismissed each and every one of the Released Claims (including, without limitation, Unknown  
20 Claims) against each and every one of the Released Defendant Parties with prejudice on the  
21 merits, whether or not Plaintiffs, or such Class Member executes and delivers the Proof of Claim  
22 and whether or not Plaintiffs, or each of the Class Members ever seeks or obtains any distribution  
23 from the Settlement Fund. Claims to enforce the terms of the Stipulation are not released.

24 12. Upon the Effective Date, Defendants shall be deemed to have, and by operation of  
25 this Judgment shall have, fully, finally, and forever waived, released, discharged, and dismissed  
26 the Released Plaintiff Parties from all Released Defendants' Claims (including, without limitation,  
27 Unknown Claims). Claims to enforce the terms of the Stipulation are not released. For the  
28 avoidance of doubt, the releases, relinquishments and discharges provided by the Released

1 Defendant Parties in the Stipulation do not include the release, relinquishment or discharge of any  
2 claim or cause of action that any of the Released Defendant Parties may have against an insurer or  
3 reinsurer for, arising out of or related to insurance coverage for, arising out of or related to the  
4 Actions or any related matter or proceeding, including any derivative or ERISA actions based on  
5 similar allegations. Claims to enforce the terms of the Stipulation are not released.

6 13. Upon the Effective Date, Plaintiffs, all Class Members and anyone claiming  
7 through or on behalf of any of them are forever permanently barred and enjoined from  
8 commencing, instituting, maintaining, enforcing, asserting, or continuing to prosecute any action  
9 or proceeding in any court of law or equity, arbitration tribunal, administration forum or other  
10 forum of any kind any of the Released Claims (including, without limitation, Unknown Claims)  
11 against any of the Released Defendant Parties.

12 14. Neither the Stipulation nor the Settlement contained therein, nor any act performed  
13 or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (i) is or  
14 may be deemed to be or may be used as an admission of, or evidence of, the validity of any  
15 Released Claim, or of any wrongdoing or liability of the Released Defendant Parties; or (ii) is or  
16 may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of  
17 any of the Released Defendant Parties; or (iii) is or may be deemed to be or may be used as an  
18 admission or evidence that any claims asserted by Plaintiffs were not valid or that the amount  
19 recoverable was not greater than the Settlement Amount, in any civil, criminal, or administrative  
20 proceeding in any court, administrative agency, or other tribunal. For the avoidance of doubt, the  
21 Stipulation, this Settlement, the Exhibits, the Supplemental Agreement, and any other act  
22 performed or document executed pursuant to or in furtherance of the Stipulation of Settlement, as  
23 well as the negotiations leading to the execution of the Stipulation, and any proceedings,  
24 communications, drafts, documents or agreements taken pursuant to, or in connection with the  
25 Stipulation, (i) shall not be offered or received against the Released Defendant Parties as evidence  
26 of or construed as or deemed to be evidence of any presumption, concession, or admission by the  
27 Released Defendant Parties of the truth of any allegations by Plaintiffs, any member of the Class,  
28 or their Related Persons or the validity of any claim that has been or could have been asserted in

1 the Actions, or the deficiency of any defense that has been or could have been asserted in the  
2 Actions or in any other litigation, including, but not limited to, litigation of the Released Claims,  
3 or of any liability, negligence, fault, or wrongdoing of any kind of the Released Defendant Parties  
4 or in any way referred to for any other reason as against the Released Defendant Parties, in any  
5 civil, criminal, or administrative action or proceeding, other than such proceedings as may be  
6 necessary to effectuate the provisions of the Stipulation; (ii) shall not be offered or received  
7 against or to the prejudice of Released Defendant Parties as evidence of a presumption,  
8 concession, or admission of liability for any fault, misrepresentation, or omission with respect to  
9 any statement or written document approved or made by Released Defendant Parties, or against  
10 Lead Counsel or any member of the Class or their Related Persons as evidence of any infirmity in  
11 the claims of Plaintiffs and the Class; and (iii) shall not be offered or received against Released  
12 Defendant Parties as evidence of a presumption, concession, or admission of any liability,  
13 negligence, fault, or wrongdoing or in any way referred to for any other reason as against any of  
14 the parties to the Stipulation, in any other civil, criminal, or administrative action or proceeding;  
15 provided, however, that if the Stipulation is approved by the Court, the Released Defendant Parties  
16 may refer to it to effectuate the releases granted them hereunder. The Released Defendant Parties  
17 may file the Stipulation and/or the Judgment in any action that may be brought against them in  
18 order to support a defense or counterclaim based on principles of res judicata, collateral estoppel,  
19 release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion,  
20 issue preclusion, or similar defense or counterclaim.

21 15. Notice of Lead Counsel's motion for attorneys' fees and payment of expenses was  
22 given to all Class Members who could be identified with reasonable effort. The form and method  
23 of notifying the Class of the motion for attorneys' fees and expenses met the requirements of  
24 Rules 23 and 54 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities  
25 Exchange Act of 1934, 15 U.S.C. §78u-4(a)(7), as amended by the Private Securities Litigation  
26 Reform Act of 1995, due process, and any other applicable law, constituted the best notice  
27 practicable under the circumstances, and constituted due and sufficient notice to all persons and  
28 entities entitled thereto.

1       16. The Court hereby awards Lead Counsel attorneys' fees of 25% of the Settlement  
2 Amount (the benchmark in the Ninth Circuit), plus expenses in the amount of \$638,213.52,  
3 together with the interest earned thereon for the same time period and at the same rate as that  
4 earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is  
5 appropriate, fair, and reasonable given the substantial risks of non-recovery, the contingent nature  
6 of the representation, awards in similar cases, the time and effort involved, and the result obtained  
7 for the Class.

8       17. In making this award of fees and expenses to Lead Counsel, the Court has  
9 considered and found that:

10       (a) the Settlement has created a fund of \$71,000,000 in cash that is already on  
11 deposit, and numerous Class Members who submit, or have submitted, valid Proof of  
12 Claim forms will benefit from the Settlement created by Lead Counsel;

13       (b) over 154,700 copies of the Postcard Notice were disseminated to potential  
14 Class Members indicating that Lead Counsel would move for attorneys' fees not to exceed  
15 30% of the Settlement Amount and for expenses in an amount not to exceed \$750,000,  
16 plus interest thereon, and no objections to the fees or expenses were filed by Class  
17 Members;

18       (c) Lead Counsel have pursued the Actions and achieved the Settlement with  
19 perseverance and diligent advocacy;

20       (d) Lead Counsel have expended substantial time and effort pursuing the  
21 Actions on behalf of the Class;

22       (e) Lead Counsel pursued the Actions on a contingent basis, having received no  
23 compensation during the Actions, and any fee amount has been contingent on the result  
24 achieved;

25       (f) the Actions involve complex factual and legal issues and, in the absence of  
26 settlement, would involve lengthy proceedings whose resolution would be uncertain;

27       (g) had Lead Counsel not achieved the Settlement, there would remain a  
28 significant risk that the Class may have recovered less or nothing from Defendants;

(h) Plaintiffs' Counsel have devoted over 16,000 hours, with a lodestar value of \$10,581,445.25 to achieve the Settlement, and after considering and excluding from the lodestar cross-check the hours spent on disputes over the appointment of lead counsel, and award of 25% of the Settlement Amount is appropriate;

(i) Class Representative approved an amount in excess of the attorneys' fees awarded as fair and reasonable; and

(j) the attorneys' fees and expenses awarded are fair and reasonable and consistent with awards in similar cases within the Ninth Circuit.

9           18. Pursuant to 15 U.S.C. §78u-4(a)(4), the Court awards Class Representative  
10 California Ironworkers Field Pension Trust \$2,000.00 for its time and expenses representing the  
11 Class.

12        19. Without affecting the finality of this Judgment in any way, this Court hereby  
13 retains continuing jurisdiction over: (i) implementation of the Settlement and any award or  
14 distribution of the Settlement Fund, including interest earned thereon; (ii) disposition of the  
15 Settlement Fund; (iii) hearing and determining applications for attorneys' fees and expenses in the  
16 Actions; and (iv) all parties hereto for the purpose of construing, enforcing, and administering the  
17 Settlement.

18        20.     In the event that the Settlement does not become effective in accordance with the  
19 terms of the Stipulation, or the Effective Date does not occur, or in the event that the Settlement  
20 Fund, or any portion thereof, is returned to the Defendants or their insurers, then this Judgment  
21 shall be rendered null and void to the extent provided by and in accordance with the Stipulation  
22 and shall be vacated; and in such event, all orders entered and releases delivered in connection  
23 herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

24        21. The Settling Parties shall bear their own costs and expenses except as otherwise  
25        provided in the Stipulation or in this Judgment.

26        22. Without further order of the Court, the Settling Parties may agree to reasonable  
27 extensions of time to carry out any of the provisions of the Stipulation.

28 23. The Court's orders entered during these Actions relating to the confidentiality of

1 information shall survive this Settlement.

2 24. Class counsel shall file a post-distribution accounting within 21 days after the  
3 settlement checks become stale (or, if no checks are issued, all funds have been paid to class  
4 members, cy pres beneficiaries, and others pursuant to the settlement agreement). In addition to  
5 the information contained in the Northern District of California's Procedural Guidance for Class  
6 Action Settlements, available at <https://cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/>, the post-distribution accounting shall discuss any significant or recurring  
7 concerns communicated by class members to the settlement administrator or counsel since final  
8 approval, any other issues in settlement administration since final approval, and how any concerns  
9 or issues were resolved. Class Counsel shall also include a final accounting for the costs of the  
10 Settlement Administrator, reflecting the costs savings from the reduction in the mailing of claims  
11 packets and breaking down the other costs incurred in Settlement Administration.

12 25. The Court orders the Settlement Administrator to withhold 20% of the attorney's  
13 fees granted in this order until the post-distribution accounting has been filed. Class counsel shall  
14 file a proposed order releasing the remainder of the fees when they file their post-distribution  
15 accounting.

16 26. This matter is set for a further case management conference on April 9, 2024, with  
17 a case management statement due on April 2, 2024. The parties may request that the case  
18 management conference be continued if additional time is needed to complete the distribution.  
19 The conference will be vacated if the post-distribution accounting has been filed and the Court has  
20 released the remaining attorney's fees.

21 **IT IS SO ORDERED.**

22 Dated: October 6, 2023

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William H. Orrick  
United States District Judge